

BEFORE THE STATE OF MONTANA
 SUPERINTENDENT OF PUBLIC INSTRUCTION

MILO & DEBBIE LAMPHIER,
 Rte. 2, Box 2353, Sidney, MT
 59270, et al.,

Appellants

-vs-

JOAN A. RITTER, Richland
 County Superintendent, et al.,

Respondent

MEMORANDUM OPINION

On May 3, 1983 the Richland County Transportation Committee held a hearing in the above-entitled matter and following the hearing submitted the issue to a vote. The decision of the Transportation Committee was to deny the Appellant's request for a change in the school bus route. A copy of a Decision and Order was received by the State Superintendent on May 23, 1983. That Decision was dated May 17, 1983 and signed by the County Superintendent who is also chairman of the Richland County Transportation Committee, Joan Ritter.

On June 1, 1983, the attorney for the Appellants filed a Notice of Appeal with the State Superintendent citing, among other grounds, the fact that no findings of fact were issued. It appears from the outset that findings of fact, conclusions of law and an order were issued; however, they were not served in accordance with the Administrative Rules of Montana. Appellants were not prejudiced because the decision was timely filed. They were eventually provided with an unsigned copy of the findings and order which was attached to the brief submitted August 1, 1983 by the Deputy County Attorney for Richland County. In Appellant's Reply Brief, Appellant's attorney does raise the issue of prejudice in such a delay in receiving the Decision and again has attacked the form of the findings under the Administrative Rules of Montana.

The issue presented by this appeal relates both to the legal sufficiency of the findings and order of the

Transportation Committee as well as the legal standard used by the Transportation Committee in denying the change in the bus route to eligible transportees.

The record reflects that approximately 66 eligible and 18 ineligible transportees ride the subject bus. Appellants are parents of four children who ride the bus. The distance from their homes to the bus stop is between .7 and .8 of a mile. The parents have requested the Transportation Committee to adjust the bus route to provide that their children be picked up nearer their homes. This request was denied by the School District Transportation Committee, and the appeal to the County Transportation Committee was followed with a hearing on May 3, 1983. The committee's order upholds the decision of the Sidney School Board against an extension of the bus route. It is the conclusion of the Richland County Transportation Committee that Appellants are not being denied bus service. Appellants argue through their attorney that the failure to extend bus service amounts to a denial, at least in part, of bus service.

Transportation is defined by Section 20-10-101 MCA to mean "a district's conveyance of a pupil by a school bus between his legal residence and the school designated by the trustees for his attendance."

Further, Section 20-10-121 MCA provides:

The trustees of any district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for any eligible transportee, the trustees must provide all eligible transportees of the district with transportation. The trustees shall furnish transportation when directed to do so by the county transportation committee and such direction is upheld by the superintendent of public instruction.

Section 20-10-121(4) also provides:

When the parent or guardian of an elementary pupil consents to a trip of over 1 hour, the trustees may require such eligible transportee to ride a school bus for more than 1 hour per trip.

It is clear from the record, although not from the findings, that the children involved here are eligible transportees within the meaning of the statute. Each of them appears to live in excess of four miles from the nearest school. The record and the decision reflect that they must walk or be transported between .7 and .8 of a mile from the existing bus route to their homes.

The committee's decision states the basis for the Sidney School Board's decision as one of safety. The County Transportation Committee found that the road had several switch-back turns and a gorge through to the edge. The pictures presented to the committee indicate the road to be paved. The testimony of the Deputy Sheriff and county road crew indicates that there is no particular hazard along this road, although one of the parents testified to an incident where the children were walking along this road and were met by cars going each way, causing concern for their safety to at least one of the drivers. The board does not make an explicit finding that the particular road in question is unsafe. It questions whether seeking absolute guarantees of sanding and maintenance during hazardous winter weather are genuine concerns. These concerns, however, are shared by every district and county transportation committee in this state, and they relate not only to local and county roads, but also to state highways.

However, there is a portion of Montana law found in 20-10-142 which provides for the transportation of an eligible transportee to a school bus stop and provides for reimbursement of that travel if it is in excess of 3 miles round trip from the bus stop. See 20-10-142(2) MCA.

The testimony concerning safety provided by the attorney for the Appellants indicates that it probably would not only be safe for the school bus, but that it would be safe for transporting the children by car to the stop.

It may be time for the legislature to review these mileage distances for transportation to and from school bus stops; but, at present, I must follow the law.

To be sure, the final decision of the County Transportation Committee could be more formally structured. Although there are findings and a conclusion of law, I do find that the findings relating to safety are insufficient and not supported by the record; but, in view of 20-10-121 and 20-10-142 MCA and the record, I will modify the decision of the County Transportation Committee to find that such road is safe for transporting children either by bus or by private transportation and that, as a matter of law, transportation within 3 miles round trip of a bus stop for eligible transportees is not required by state law.

I would hope that, in the future, decisions of the County Transportation Committee are mailed promptly to all parties. Since no prejudice was actually suffered in this instance, the error does not require a rehearing or other delay. Therefore, the decision of the County Transportation Committee as modified by this decision is affirmed.

DATED this 15th day of December, 1983.